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1 UNITED STATES DISTRICT COURT
2 SOUTHERN DISTRICT OF NEW YORK

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3 UNITED STATES OF AMERICA,

4 v.

18 Cr. 601 (PGG)

5 JEAN-CLAUDE OKONGO LANDJI, and
6 JIBRIL ADAMU,

Trial

7 Defendants.

8 -----x

New York, N.Y.
October 6, 2021
9:45 a.m.

10
11 Before:

12 HON. PAUL G. GARDEPHE,

13 District Judge

14 APPEARANCES

15 AUDREY STRAUSS

United States Attorney for the
Southern District of New York

16 MATTHEW HELLMAN

17 ELINOR TARLOW

Assistant United States Attorneys

18 SHER TREMONTE

Attorneys for Defendant Landji

19 BY: MICHAEL TREMONTE

20 NOAM BIALE

KATIE ELIZABETH RENZLER

21 THOMAS F.X. DUNN

22 JACQUELINE CISTARO

Attorneys for Defendant Adamu

23 Also Present:

24 Emmanuel Orji, Interpreter (French)

25 Marie Jose Voigt, Interpreter (French)

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1 (Case called)

2 THE DEPUTY CLERK: United States of America v. Jibril
3 Adamu and Jean-Claude Landji, counsel for the government,
4 please state your name.

5 MS. TARLOW: Good morning, your Honor. Elinor Tarlow,
6 for the government. I am joined at counsel table by my
7 colleague Matthew Hellman.

8 THE DEPUTY CLERK: Counsel for the defendants, please
9 state your names.

10 MR. DUNN: Good morning, your Honor. Thomas Dunn and
11 Jacqueline Cistaro for Jibril Adamu.

12 MR. BIALE: Good morning, your Honor. Noam Biale and
13 Katie Renzler for Jean-Claude Landji.

14 THE COURT: Please be seated.

15 Jury selection is going to begin in this matter later
16 this morning. I want to address a few outstanding issues
17 before we head to the jury assembly room for the jury selection
18 process.

19 First, I want to correct something I said to you
20 earlier about peremptory challenges. I think I told you at the
21 last conference that we would be selecting three alternates,
22 and I think I also told you that with respect to the three
23 alternates, the parties would have three peremptory challenges.
24 If I said that, that was incorrect. We will be selecting three
25 alternate jurors.

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1 MR. BIALE: I'm sorry, your Honor. I'm sorry to
2 interrupt. The interpretation is apparently not working, so
3 Mr. Landji can't hear anything.

4 (Discussion off the record)

5 MR. BIALE: Thank you. I apologize, your Honor.

6 THE COURT: Not a problem.

7 I was saying that we will be selecting three alternate
8 jurors, as I told the parties at our last conference. I think
9 I may have told the parties that they would have three
10 peremptory challenges with respect to the selection of the
11 three alternate jurors. If I said that, that was incorrect.
12 Each side will have two peremptory challenges for purposes of
13 selecting the three alternate jurors. Citing Federal Rule of
14 Criminal Procedure 24(c)(4)(B).

15 I also want to review with the parties how I do jury
16 selection, which is through the use of the simultaneous
17 submission of lists of jurors against whom the parties wish to
18 exercise peremptory challenges. So the way this is going to
19 proceed is I will qualify the 42 people sitting in the jury
20 assembly room. That is capacity for the jury assembly room
21 given the pandemic. After I've done that, I will hear the
22 lawyers up at the bench with respect to any challenges for
23 cause, and I will rule on those applications. I will then ask
24 the lawyers to prepare a list of the panel members against whom
25 they wish to exercise peremptory challenges, and then those

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1 lists will be submitted simultaneously.

2 In normal times it is my practice to take a recess and
3 send the jury panel out of the courtroom while the lawyers are
4 preparing their lists. I've been told by the jury office
5 people who control this process that it is not practical for me
6 in current circumstances to send the jury panel out of the jury
7 assembly room. So what that means is that I am going to need
8 the lists from you of the jurors against which you wish to
9 exercise peremptory challenges rather quickly. So what that's
10 going to require you to do is as we're qualifying the jurors,
11 you're going to need to make notes about which panel members
12 you think you might want to exercise peremptory challenges
13 against, because I can't give you a half an hour to figure out
14 who they are after we've spent hours questioning them. So
15 please try to keep that in mind as we go through the jury
16 selection process that, ultimately, you will be called upon to
17 prepare a list of the panel members against whom you wish to
18 exercise peremptory challenges, and I don't have the luxury to
19 give you a lot of time to do that.

20 MR. TREMONTE: Your Honor, may I be heard briefly?

21 THE COURT: Yes.

22 MR. TREMONTE: Just a few weeks ago, I participated in
23 jury selection in a trial that was before Judge Rakoff in that
24 room. It is very socially distanced in terms of the spacing
25 between the lawyers. That case was a single-defendant case, so

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1 I'm not sure how it works with multiple defendants, but I think
2 we're going to want to be able to confer, as we share
3 challenges. I'm not exactly sure how to do that, but I would
4 just ask the Court's patience as we sort that out.

5 THE COURT: Yes. I mean, you're going to have to
6 consult because you're going to have to jointly exercise these
7 challenges. So absolutely I understand counsel are going to
8 have to confer, and I will certainly permit you to do that.
9 Don't worry about that at all.

10 In any event, the list that you develop, and there
11 will be -- the defense is entitled to ten peremptory challenges
12 as to the 12-member jury, and the government is entitled to
13 six. You will submit those lists simultaneously. At sidebar I
14 will review with you -- I will review with counsel the panel
15 members against whom the government has exercised peremptory
16 challenges and the defense has exercised peremptory challenges.
17 To the extent there were overlap between those lists, it just
18 simply means that the juror's is being struck by both sides.

19 So we will go through that exercise. We will agree
20 upon who the 12 lowest number panel members are who survive the
21 process, and they will become our jury of 12. We will then
22 turn to the selection of the alternates. You will once again
23 prepare lists of the panel members against whom you wish to
24 exercise peremptory challenges. As I said, each side will have
25 two peremptory challenges for purposes of the selection of the

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1 three alternate jurors. You will submit lists of the two panel
2 members against whom you wish to exercise peremptory
3 challenges. We will review those lists with you. We will
4 reach agreement on who are the three lowest numbered jurors who
5 have survived the process, and they will become our alternate
6 jurors.

7 Any questions about the process?

8 MS. TARLOW: Not from the government.

9 THE COURT: All right. I'm going to turn to the
10 outstanding issues. There is a *Kastigar* motion that's
11 presently pending before the Court. At the outset, I want to
12 express my deep disappointment with both sides that this issue
13 is still being litigated moments before we're scheduled to
14 select a jury in this case which has been pending for more than
15 two years. Briefing has continued to pour in from both sides
16 despite the fact that the issue of the government's access to
17 allegedly privileged information has been in play for two
18 years, during which the defendants have been held in custody in
19 the United States.

20 Defense counsel has known about this issue since at
21 least October 2019 when the defendants were extradited to the
22 United States from Croatia. It appears that both clients told
23 their lawyers at that time that legal papers of some sort were
24 taken from them at the Zagreb airport by DEA agents. The
25 government also apparently made a discovery production to

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1 defendants in January 2020 that included documents that the
2 defendants claim were privileged. Despite this, neither
3 defendant ever laid before the Court this issue until
4 August 2021. Instead, the defendants filed a motion in
5 October 2020 that included no specifics about the government's
6 allegedly improper access to privileged material. Based on the
7 defendants' inadequate filing at that time, I denied their
8 application for a hearing as to whether the government's review
9 of privileged information had been improper. Now, at that time
10 defense counsel apparently already had had for months materials
11 indicating that the government had reviewed or at least had had
12 access to privileged information. None of that was laid before
13 me at the time.

14 For the government's part, there has been an
15 inexplicable failure to give proper attention to this issue
16 despite repeated requests from Adamu's lawyer, Thomas Dunn, for
17 legal materials taken from his client in Zagreb at the time of
18 his extradition in October 2019. Mr. Hellman did not make
19 appropriate efforts to determine whether this was true. In
20 January of 2020, when Mr. Hellman began to have concerns that
21 privileged material may have been seized from the defendants at
22 the time of their extradition, he did not take appropriate
23 steps to get to the bottom of that issue. In particular, he
24 did not arrange for a taint team to review whatever it was that
25 had been seized from the defendants in Zagreb, even when a

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1 colleague repeatedly raised concerns that privileged material
2 may have been taken from the defendants.

3 It was not until August of 2021, when the defense
4 lawyers reviewed the hard copy material that had been seized
5 from their clients in October 2019, that it became clear that
6 the government had seized additional privileged material from
7 the defendants, material that had not been disclosed in
8 January 2020 in the government's discovery production.

9 These circumstances have led to a cascading series of
10 submissions from the parties, a two-day testimonial hearing,
11 and extensive briefing regarding the legal implications of the
12 government's access to the defendants' privileged material. As
13 I noted, briefing on this subject has been extensive and has
14 continued right up until the last few days. The issues
15 presented in the briefing are complex, in part because there's
16 no governing authority in the Second Circuit as to the
17 standards that apply when a *Kastigar* issue arises in the
18 context of government access to a defendant's privileged
19 material. Accordingly, the law is not well established
20 regarding burden of proof and when it shifts to the government.

21 In normal times, I would adjourn the trial, but I
22 can't do that in the midst of this pandemic given that the
23 defendants have been held already for nearly two years in
24 custody, not including the year they spent in custody in
25 Croatia. Were I to adjourn the trial, given the restrictions

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1 on courtroom availability required by the COVID-19 pandemic, it
2 could be six months before I am again given access to another
3 courtroom, and the defendants would remain in custody during
4 that time. Accordingly, we must press on to trial despite the
5 unfortunate circumstances I have outlined.

6 With respect to defendants' *Kastigar* motion, in the
7 *Kastigar* case, the Supreme Court established a broad
8 prohibition on the use of compelled testimony protected under
9 the Fifth Amendment. Citing *Kastigar v. United States*,
10 406 U.S. 441, 453 (1972). The *Kastigar* Court established a
11 mechanism to enforce this protection: "When a witness has been
12 compelled to testify relating to matters for which he is later
13 prosecuted, the government bears the heavy burden of proving
14 that all of the evidence it proposes to use was derived from
15 legitimate, independent sources." *United States v. Allen*,
16 864 F.3d 63, 91 (2d Cir. 2017) (quoting *Kastigar*, 406 U.S.
17 461-62). "The government must prove it has met this heavy
18 albeit not insurmountable, burden of the evidence." *Id.* at
19 page 92. The same protection applies to information protected
20 by the attorney-client privilege. *United States v. Schwimmer*,
21 924 F.2d 443, 446 (2d Cir. 1991) ("The government must
22 demonstrate that the evidence it uses to prosecute an
23 individual was derived from a legitimate independent sources"
24 and not "improperly" derived from "privileged information.")
25 However, as I have noted, the Second Circuit has not set forth

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1 the threshold showing necessary to shift the burden to the
2 government to show that its evidence comes from an untainted
3 source. Defendants have moved for a continuation of the
4 evidentiary hearing that I conducted back on September 9 and
5 September 14 of this year, arguing that "the evidence adduced
6 at that hearing more than suffices to shift the burden" to the
7 government to prove "that its trial evidence is derived from a
8 wholly independent source." Citing the defendant's
9 post-hearing brief, Dkt. No. 554, at pages 29 and 33.

10 Defendants argue that "mere glances or even just
11 access to the privileged material" should shift the burden to
12 the government to disprove taint. *Id.* at page 29. The
13 government maintains that "defendants have not adduced
14 sufficient evidence to shift the burden of proof to the
15 government under *Kastigar*." Citing the government's
16 post-hearing brief, Dkt. No. 562, at page 51.

17 While the government argues that "defendants have
18 failed to prove that anyone from the government reviewed
19 allegedly privileged materials," *Id.* at page 41, there is no
20 question, given the evidence before the Court, that the agents
21 and an analyst at the DEA, as well as members of the
22 prosecution team in the U.S. Attorney's Office, accessed the
23 materials seized from defendants during extradition which
24 defendants claim contained privileged attorney-client material.

25 Further, the government has argued in its post-hearing

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1 brief that, contrary to defendants' assertions, it has not
2 changed its theory of the prosecution after reviewing
3 defendants' material seized during extradition and "that the
4 government did not use any privileged material." Citing the
5 government's post-hearing brief, Dkt. No. 562, at pages 46-50
6 and 52-55. However, as defendants point out, the government
7 cannot satisfy its burden under *Kastigar* in an unsworn filing
8 where defendants have not been afforded the opportunity to
9 confront the government's evidence.

10 As I have noted, there's no governing authority from
11 the Second Circuit as to the circumstance in which a burden
12 shift occurs where the government has had some amount of access
13 to privileged material. As I have said here, there is no doubt
14 that the government accessed privileged material in the sense
15 that privileged material was scanned for purposes of producing
16 it to the defendants. It is possible that the Second Circuit
17 could conclude that such proven access is sufficient to shift
18 the burden to the government to disprove taint. It is also
19 possible that the Second Circuit could determine that there is
20 no burden shift until a defendant has proffered evidence that a
21 government agent or prosecutor actually read the privileged
22 material. I have no way of predicting how the Second Circuit
23 would come out on that issue.

24 Accordingly, I am going to give the defendants the
25 hearing they have requested as to whether the government's

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1 prosecution of the defendants has been tainted by the
2 government's access to admittedly privileged information.

3 We will conduct that hearing tomorrow morning at 9:30,
4 assuming that the jury selection process has been completed by
5 that time. If not, we will proceed with a hearing immediately
6 after the jury selection process has been completed.

7 The government will proceed first at that hearing,
8 particularly in light of factual allegations it has made in a
9 recent briefing that are not supported by affidavit or
10 declaration. The defendants will have an opportunity to
11 cross-examine the government's witnesses and to offer any
12 evidence that they wish on the subject of whether the
13 government's prosecution of the defendants has been tainted by
14 the government's access to privileged material.

15 The defendants have repeatedly sought access to the
16 government's grand jury presentation in this matter, arguing
17 that this access is necessary for them to demonstrate that the
18 government's strategy has changed as a result of the
19 government's access to privileged information. I previously
20 ruled that the defendants had not demonstrated an adequate
21 basis for piercing grand jury secrecy. The defendants have
22 recently renewed their application, which remains deficient.
23 The government has disclosed to the defense that DEA agent
24 Waters testified before the grand jury in this case. On
25 December 19, 2018, long before the government came into

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1 possession of any privileged material, Agent Waters submitted a
2 detailed affidavit in support of the government's request for
3 extradition of the defendants from Croatia. Citing the
4 December 19, 2018, Waters affidavit. The state of the
5 government's proof at that time is fully set forth in the
6 Waters' affidavit. Given the circumstances, defendants have
7 not provided a sufficient basis for me to order the government
8 to produce Agent Waters' testimony before the grand jury.

9 Now, I would note that Agent Waters is going to be a
10 government witness at trial. Is that true?

11 MS. TARLOW: He may be, your Honor.

12 THE COURT: He may be.

13 Now, have you provided 3500 material for Agent Waters?

14 MS. TARLOW: Yes, with respect to the limited topic
15 that he might testify to regarding defendant Adamu's postarrest
16 statement.

17 THE COURT: All right. Now, I believe that in his
18 affidavit, Agent Waters discusses Adamu's postarrest statement.
19 Isn't that true?

20 MS. TARLOW: The affidavit for extradition? I think
21 that is accurate, your Honor.

22 THE COURT: Right. So to the extent that Agent Waters
23 testified in the grand jury about Adamu's statement, you would
24 be required to disclose that under 3500, right?

25 MS. TARLOW: Yes, your Honor, to the extent he

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1 testified about the postarrest.

2 THE COURT: So to summarize, we will proceed to jury
3 selection today. Assuming we complete that process today,
4 tomorrow at 9:30 a.m., instead of proceeding to trial, we will
5 meet in this courtroom to conduct the evidentiary hearing I
6 have referenced. As for the trial, after we complete jury
7 selection, given the issues we have encountered in connection
8 with the defendants' *Kastigar* motion, the need for an
9 additional hearing on that matter, and the fact that Monday is
10 a federal holiday, it is likely that I will excuse the jury
11 until Tuesday, October 12, 2021. It is my expectation we will
12 begin with opening statements at that time. I will endeavor to
13 issue an opinion on the outstanding *Kastigar* motions before
14 that time.

15 I want to turn to a motion *in limine* regarding the
16 defendants' application with respect to cross-examination of
17 the government's anticipated witness, DEA Agent Matthew
18 Fihlman. This is in relation to a letter of reprimand that
19 Agent Fihlman received from the DEA back in 2008. Defendants
20 argue that cross-examination on this point is appropriate under
21 Federal Rule of Evidence 608(b) because the letter of reprimand
22 involves "the accuracy and truthfulness of sworn statements
23 [Agent Fihlman] made to the DEA office of professional
24 responsibility (OPR)" such that it "bears on [his] for
25 character for truthfulness or untruthfulness." Citing

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1 October 4, 2021, defense letter, Dkt. No. 575, at page 1. The
2 government opposes defense counsel's application, arguing that
3 the proposed cross-examination "pertains to remote historical
4 conduct, is not probative of the witness' character for
5 truthfulness, and will likely confuse and mislead the jury."
6 Citing the October 5, 2021, government letter, Dkt. No. 577, at
7 page 1.

8 The background is as follows: In August 2006, the FBI
9 began investigating members of the Dallas Police Department for
10 possible misconduct. During that investigation, the government
11 came -- the FBI came to suspect that a former DEA task force
12 officer working with the Dallas Police Department, a person
13 named Sanders, "may have kept moneys actually due to [a
14 confidential source she had utilized] for [the source's]
15 cooperation." Citing the October 4, 2021, defense letter,
16 Exhibit A, Dkt. No. 575-1, at page 3. The FBI requested the
17 assistance of the DEA's Office of Professional Responsibility
18 to obtain the payment records for this confidential source.
19 *Id.*

20 Agent Fihlman was interviewed by the FBI and OPR
21 investigators, and on June 13, 2007, he provided a sworn
22 statement in which he said he had assisted Sanders "in
23 conducting several investigations generally on a daily basis,"
24 that Sanders introduced Fihlman to the confidential source, and
25 that Fihlman "participated in debriefings of the [confidential

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1 source] and participated in making payments to the
2 [confidential source] with both DEA and Dallas Police
3 Department funds." *Id.* at page 4.

4 Agent Fihlman also said that he was "either a claimant
5 or a witness to those payments and that [his] signature appears
6 as one or the other on a number of DEA documents corroborating
7 those payments," and that he "signed as a witness on Dallas
8 Police Department forms documenting payments to the
9 [confidential source] utilizing DEA funds and witnessed several
10 payments made by Sanders with Dallas Police Department funds on
11 a Dallas Police Department form." *Id.*

12 When Agent Fihlman was confronted with the Dallas
13 Police Department payment forms "bearing [his] signature as the
14 witness for money paid to the [confidential source's] son, he
15 said [he] did not witness the payments to [the source's son],"
16 and that "on most occasions [he] witnessed Sanders hand the
17 confidential source the money, but that on a few occasions
18 [Fihlman] did not physically see Sanders hand the [confidential
19 source] the money." *Id.* Fihlman also "admitted that on some
20 occasion [he] did not witness the money being counted out
21 and/or physically exchanged," and that "there were occasions
22 when Sanders had already physically paid the [confidential
23 source] before [Agent Fihlman] was called upon to sign as a
24 witness to the payment," which Agent Fihlman admitted he
25 nonetheless signed, relying on Sanders' representation that the

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1 payment had been made. *Id.*

2 Based on Agent Fihlman's sworn statement in 2008, the
3 DEA OPR charged Agent Fihlman with (1) "inattention to duty"
4 for "signing as a witness to a confidential source payment [he]
5 did not actually observe," *Id.* at page 4, and (2) "failure to
6 follow instructions" for contravening the DEA standards of
7 conduct requiring that employees sign documents only after
8 reading and confirming them as accurate." *Id.* at page 5.
9 Based on these charges, which Agent Fihlman did not contest and
10 which the DEA found to be "fully supported by the evidence,"
11 the DEA issued a letter of reprimand to him in May 2008. *Id.*
12 at page 7.

13 I have not been provided with a sworn statement Agent
14 Fihlman made during the investigation, nor the attestation he
15 made regarding the payments to the informant. The government
16 says that it has requested these materials from the DEA and
17 will provide them to the Court and defense counsel once they
18 are received. Citing the October 5, 2021, government letter,
19 Dkt. No. 577, at page 3.

20 Accordingly, I will not rule on this matter now.
21 However, I will give the parties my reaction to what I have
22 seen so far.

23 Federal Rule of Evidence 608(b) provides that
24 generally "extrinsic evidence is not admissible to prove
25 specific instances of a witness' conduct in order to attack or

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1 support the witness' character for truthfulness, but the court
2 may on cross-examination allow them to be inquired into if they
3 are probative of the character for truthfulness or
4 untruthfulness of the witness." Citing Federal Rule of
5 Evidence 608(b).

6 Defendants argue that Agent Fihlman's "false sworn
7 statements made to the OPR and signed statements in which he
8 falsely attested to witnessing certain types of payments" are
9 "probative of his character for truthfulness or untruthfulness"
10 and that they should be permitted to cross-examine him on this
11 subject. Citing the defendant's October 4, 2021, letter
12 Dkt. No. 575, at page 3. Defendants also argue that because
13 the "proposed line of questioning will be limited to the
14 findings associated with the letter of reprimand" and will
15 comprise "just a few questions," there is no danger of unfair
16 prejudice under Rule 403. *Id.* at pages 3-4.

17 The government contends that "OPR's findings do not
18 support the conclusions that Fihlman made false statements on
19 forms and to OPR." Citing the government's October 5, 2021,
20 letter, Dkt. No. 577, at pages 2-3. According to the
21 government, "the OPR investigation did not charge Fihlman with
22 making a false or a dishonest statement in connection with the
23 payments [for which Sanders was investigating], and it did not
24 find that Fihlman had lied during the course of the OPR's
25 investigation." *Id.* at pages 1-2.

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1 However, the documents that have been submitted to me
2 indicate "when inspectors presented [Agent Fihlman] with Dallas
3 Police Department [confidential source] payment forms bearing
4 [Agent Fihlman's] signature as the witness for money paid to
5 the [confidential source's] son, [Agent Fihlman] said he did
6 not witness the payments to the source's son." October 4,
7 2021, defense letter, Exhibit A, Dkt. No. 575-1, at page 4.

8 (Continued on next page)

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1 THE COURT: But when Agent Fihlman was signing the
2 form, he was attesting to the fact that he witnessed a payment
3 when, in fact, he had not witnessed a payment on a number of
4 occasions. Accordingly, his attestation that he had witnessed
5 the payment was false. The fact that he made a false statement
6 under these circumstances, and again, I need to see the form
7 that he actually signed and what it says with respect to the
8 attestation, but based on what I have seen so far, it does seem
9 to me that Agent Fihlman's false attestation that he had
10 witnessed a payment that was made when, in fact, he had not
11 witnessed the payment, it does seem to me that is probative of
12 his truthfulness.

13 The government further argues that cross-examination
14 on this point should be precluded under Rule 403 because "the
15 underlying fact pattern is complex," and would require "a
16 lengthy discursion regarding these incidences, distracting the
17 jury from the substance of Fihlman's testimony and the case on
18 trial." Citing the government's October 5, 2021 letter, Dkt.
19 No. 577 at page 3. This argument does not appear persuasive to
20 me because the facts underlying this incident seem very
21 straightforward. When agents or police officers are making
22 payments to confidential informants, it's obviously important
23 that a record be maintained of that payment. Confidential
24 informants are inherently suspect. They are often people who
25 have engaged in criminal conduct, and the payments they receive

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1 from law enforcement agencies give them an obvious motive to
2 fabricate. So these are not outstanding citizens. They are
3 people who have to be dealt with very carefully, and it's for
4 that reason that law enforcement agencies have documentary
5 requirements about payments that are made to such individuals.
6 And so all of that seems very straightforward. And inherent in
7 that circumstance, or those circumstances, is it's important
8 that there be witnesses to payments that are made to such
9 people because disputes can arise later about whether a payment
10 was made or not.

11 And so it should have been obvious to everyone
12 involved that it was important to the agency, important to the
13 Dallas Police Department, that payments made to this particular
14 confidential source's son, or to the confidential source him or
15 herself, be properly documented. So it does seem to me that
16 none of this requires extensive background. It's obvious that
17 when money is paid, it's important to document it, and part of
18 the documentary process is a certification from the agents or
19 police officers involved that the money was actually paid. And
20 given that Agent Fihlman admitted that he was actually not
21 present when certain payments to the source or the source's son
22 were made, it should have been obvious to him that attesting to
23 the payment, or certifying that it was made, was improper, and
24 it was in that context that he was reprimanded.

25 Now, it is true that the reprimand doesn't make a

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1 finding of dishonesty or false statement or anything of that
2 sort. As I said at the outset, Mr. Fihlman was disciplined for
3 inattention to duty and a failure to follow DEA policy. So
4 with respect to their reprimand, that's what it was for. There
5 was no finding made that he was intentionally dishonest or that
6 he intentionally made a false statement. And the government
7 would of course be permitted to bring out those circumstances.
8 But subject to my receiving the underlying documents, my
9 inclination would be to permit cross-examination on the
10 subject.

11 I want to turn some other issues that we discussed on
12 Monday. There was an issue regarding David Cardona-Cardona's
13 guilty plea to narcoterrorism and weapons charges. The defense
14 raised concerns about what evidence would be admitted. I gave
15 the parties my views regarding how the guilty plea of
16 Cardona-Cardona to the narcoterrorism and firearms charges
17 should be handled. Yesterday the parties submitted a joint
18 letter informing me that they have agreed that the government
19 will elicit from Mr. Cardona-Cardona on direct that he pled
20 guilty to narcoterrorism and weapons charges, as well as the
21 penalties he faces on those charges, together with the
22 penalties he faces based on the narcotics charges he pled
23 guilty to. But that neither defendant plans to cross-examine
24 Cardona-Cardona on those charges, and the parties at this point
25 don't plan to introduce Cardona-Cardona's cooperation

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1 agreement. Moreover, the joint letter informs me that in the
2 event it becomes necessary to introduce the cooperation
3 agreement, the parties have agreed to redactions to remove any
4 suggestion that the narcoterrorism and weapons charges are
5 related to the defendants. The parties tell me they will
6 provide a copy of the redacted cooperation agreement to the
7 court before offering it as an exhibit. Accordingly, issues
8 regarding Cardona-Cardona's narcoterrorism firearms crimes
9 appear to have been resolved.

10 Defendant Adamu has submitted a letter seeking to call
11 an expert witness, Michael Levine, to testify as to defendant's
12 "blind mule" defense. Citing Dkt. No. 574. The government
13 filed its opposition to that application last night, arguing
14 that Levine's proposed testimony should be precluded because it
15 "squarely invades the province of the jury in determining the
16 defendant's state of mind at the time of the offense." Citing
17 Dkt. No. 579.

18 Adamu's application to call Levine as an expert
19 witness is denied without prejudice because counsel's
20 submission disclosing the nature of the opinions Levine would
21 offer is entirely inadequate under Federal Rule of Criminal
22 Procedure 16(b)(1)(C).

23 Adamu's counsel has submitted a transcript of Levine's
24 testimony in another case, *United States v. Gloria*
25 *Cespedes-Cano*, 01 Cr. 157 (SJ), a trial that proceeded before

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1 Judge Sterling Johnson in the Eastern District of New York.

2 See October 4, 2021 Dunn letter, Exhibit B, Dkt. No. 574.

3 Although I wasn't given background concerning the case before
4 Judge Johnson, I gather that the defendant was the subject of a
5 drug trafficking charge in that case. Drugs were found in a
6 bag she was carrying, perhaps at the airport. The drugs were
7 hidden in a compartment sewn in the bottom of her bag. *Id.*

8 Levine offered testimony for the defense. His testimony
9 indicates that he is an expert concerning the use of so-called
10 drug mules, and he opined, for a variety of reasons that he
11 explains in great detail, that the defendant in that case
12 likely had been a "blind mule," that is to say, someone who did
13 not know that there were drugs in her bag. *Id.* at ECF pages
14 15-16.

15 Although Mr. Dunn proffers Mr. Levine as an expert on
16 "blind mules," see Dkt. No. 574, he does not provide any
17 explanation of the opinions Mr. Levine will offer as to why
18 Mr. Levine believes that Mr. Adamu was a so-called blind
19 mule -- that is, in these circumstances, someone who did not
20 know that a kilogram of cocaine had been stored on board the G2
21 that was flown into Zagreb airport. Because of the
22 deficiencies in Mr. Dunn's letter and disclosures, Adamu's
23 application to call Levine as an expert witness is denied.

24 Are there other issues that the lawyers want to raise?

25 MS. TARLOW: Not from the government.

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1 MR. BIALE: Not on behalf of Mr. Landji.

2 MR. DUNN: No, your Honor.

3 THE COURT: My deputy informs me that the jury office
4 personnel have asked that defense counsel and the government,
5 defendants, the marshals, etc., as well as the interpreter,
6 proceed to the jury assembly room in the courthouse across the
7 street so that they can show you the situation and so that they
8 can make sure that the audio functions are appropriate, that
9 the interpreter can be heard, etc., etc. And then once they
10 have made sure that the arrangements are appropriate, they will
11 contact me and we will head over. So if no one has any
12 questions, I would ask you to please proceed across the street
13 to the jury assembly room, and I will see you there once I am
14 told that we are ready to proceed.

15 Thank you, all.

16 (Recess)

17 (Jury selection commenced)